IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1301 of 1991
WITH
CRIMINAL REVISION APPLICATION No 650 OF 1991

For Approval and Signature:

Hon'ble MR JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BAI DHARMISHTHABEN WIFE OF BHIKHABHAI NATHABHAI PRAJAPATI
Versus
BHIKHABHAI NATHABHAI PRAJAPATI

Appearance:
1. Special Criminal Application No. 1301 of 1991
MR SP HASURKAR for Petitioners
MR DHIRENDRA MEHTA for Respondent No. 1
MR LR POOJARI, APP. for Respondent No. 2

2. Criminal Revision Application No. 650 of 1991
MR DHIREN MEHTA FOR MR.PV.HATHI for Applicant.
Notice served 1-3.
MR SP HASURKAR for Respondent No.4.

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 28/04/2000

COMMON JUDGEMENT

Rule. Mr.Dhiren Mehta waives service of rule for respondent no.1 and Mr.L.R.Poojari, learned APP., waives service of rule for respondent no.2 - State of Gujarat in Special Criminal Application No. 1301 of 1991.

The Special Criminal Application No.1301 of 1991 under Articles 226 and 227 of the Constitution has been filed by the wife and three daughters who had filed the original application for maintenance under section 125 of the Code of Criminal Procedure. The application for maintenance was filed in the Court of learned JMFC, Vadodara (Criminal Misc.Application No. 42 of 1986). The learned Magistrate after recording the evidence came to the conclusion that the wife's allegations of ill treatment and cruelty were not proved and hence he by his order dated 31.8.1988 rejected the wife's prayer for maintenance. However, he awarded maintenance at the rate of Rs.125/-, Rs.100/- and Rs.75/- per month for three daughters who were living with the wife. The petitioner on behalf of herself and three daughters filed Criminal Revision Application No.190 of 1995 in the Court of learned Sessions Judge, Vadodara. The respondent-husband did not file any revision application challenging his liability to pay maintenance to three minor daughters. The learned Addl.Sessions Judge, Vadodara by his judgment and order dated 25.01.1991 confirmed the finding of the Magistrate that the respondent-husband had not neglected or refused to maintain his wife. However, he increased the amount of maintenance awarded in favour of the three daughters to Rs.200/-, Rs.175/- and Rs.150/p.m. respectively.

The wife on behalf of herself and three daughters has filed the Special Criminal Application and challenged the order of the learned Magistrate as confirmed by the learned Addl.Sessions Judge rejecting her prayer for maintenance. She has also prayed that the amount of maintenance for her daughters should be enhanced.

The husband has also filed Criminal Revision Application No. 650 of 1991 being aggrieved by the order of the learned Addl. Sessions Judge increasing the amount of maintenance of three daughters with effect from the date of the original application.

I have gone through the judgments of both the Courts below. The findings recorded by the learned

Magistrate and the learned Addl.Sessions Judge are based on appreciation of evidence and I find no ground for interference in exercise of jurisdiction under Articles 226 and 227 of the Constitution and revisional jurisdiction under the Code of Criminal Procedure. Hence, Special Criminal Application No.1301 of 1991 and Criminal Revision Application No. 650 of 1991 are dismissed. Rule discharged.

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m.m.bhatt